ARIZONA HOUSE OF REPRESENTATIVES Fifty-second Legislature – Second Regular Session

MINUTES RECEIVED CHIEF CLERK'S OFFICE

2-17-16

COMMITTEE ON INSURANCE

Report of Regular Meeting Wednesday, February 17, 2016 House Hearing Room 4 – 10:00 A.M.

Convened 10:07 A.M.

Recessed

Reconvened

Adjourned 10:23 A.M.

Members Present

Members Absent

Mr. Coleman

Ms. Larkin

Mr. Lovas

Ms. McCune Davis

Ms. Otondo

Mr. Robson

Mr. Livingston, Vice-Chairman

Ms. Fann, Chairman

Agenda

Original Agenda - Attachment 1

Request to Speak

Report – Attachment 2

Presentations

Name Organization Attachments (Handouts)

Committee Action

Committee	C 21Ctivii		
<u>Bill</u>	<u>Action</u>	<u>Vote</u>	Attachments
			(Summaries,
			Amendments, Roll Call,
			Attendance)
HB2553	DP	8-0-0-0	3, 4
HB2692	DPA S/E	8-0-0-0	5, 6, 7
	Committee Attendance		8

Adrian Luth, Chairman Assistant

allune TV

February 17, 2016

(Original attachments on file in the Office of the Chief Clerk; video archives available at http://www.azleg.gov)

REVISED - 02/11/16

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ARIZONA HOUSE OF REPRESENTATIVES

Fifty-second Legislature - Second Regular Session

REGULAR MEETING AGENDA

COMMITTEE ON INSURANCE

DATE Wednesday, February 17, 2016

ROOM HHR 4

TIME **CHANGE**

10:00 A.M. NOTE TIME

9:00 A.M.

Members:

Mr. Coleman

Mr. Larkin Mr. Lovas

Ms. McCune Davis

Ms. Otondo Mr. Robson Mr. Livingston, Vice-Chairman

Ms. Fann, Chairman

Bills

Short Title

Strike Everything Title

HB2553

insurance; risk retention groups (Fann)

INS, RULES

ADDENDUM #1 - 02/11/16

HB2692

insurance; pharmacy benefits; audits; pricing INS, RULES

ORDER OF BILLS TO BE SET BY THE CHAIRMAN

AL 2/11/16

People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.

Information Registered on the Request to Speak System

House Insurance (2/17/2016)

HB2553, insurance; risk retention groups

Testified in support:

J. Michael Low, Attorney, Arizona Captive Insurance Association

Support:

Stephen Briggs, representing self; Kerry L. Hayden, FARMERS INSURANCE GROUP OF COMPANIES

Neutral:

David Childers, PROPERTY CASUALTY INSURERS ASSOC OF AMERICA

All Comments:

David Childers, PROPERTY CASUALTY INSURERS ASSOC OF AMERICA: The PCI has no objection to this accreditation legislation. Thank you. David Childers; Stephen Briggs, Self: AZ DOI supports

HB2692, insurance; pharmacy benefits; audits; pricing

Support:

Erika Martinez, representing self; Tara Plese, AZ Alliance For Community Health Centers; Kristen Boilini, AZ PHARMACY ALLIANCE; Kelly Ridgway, AZ PHARMACY ALLIANCE; Erin Burk, representing self

Neutral:

Dianne McCallister, EXPRESS SCRIPTS HOLDING CO; Dianne McCallister, EXPRESS SCRIPTS HOLDING CO; Jay Kaprosy, CVS HEALTH

Oppose:

Garrick Taylor, Arizona Chamber Of Commerce And Industry

All Comments:

Dianne McCallister, EXPRESS SCRIPTS HOLDING CO: We are neutral on this bill IF the strike-everything amendment is adopted.



HOUSE OF REPRESENTATIVES

HB 2553

insurance; risk retention groups Prime Sponsor: Representative Fann, LD 1

X Committee on Insurance

Caucus and COW

House Engrossed

OVERVIEW

HB 2553 establishes the rules and regulations for state-licensed risk retention groups.

PROVISIONS

- 1. Requires the board of directors (BOD) of a risk retention group to have a majority of independent board directors.
- 2. Stipulates if a risk retention group is a reciprocal risk retention group:
 - a. The attorney-in-fact must adhere to the independence of operation and governance standards, and
 - b. Services providers must contract with the group and not the attorney-in-fact.
- 3. Specifies the BOD must affirmatively determine the board director has no material relationship with the risk retention group in order for the director to qualify as independent.
 - a. The BOD must annually inform its domestic regulator of the determination.
- 4. Asserts any person that is an owner of or a subscriber in the group, or is an officer, director or employee of an owner is considered independent unless some other position constitutes as a material relationship.
- 5. States that a material service provider's contract with the group is limited to five years.
 - a. Any contract or renewal requires the majority approval of the independent board directors.
- 6. Authorizes the BOD to cancel any service provider, audit or actuarial contracts at any time for cause after providing adequate notice pursuant to the contract.
- 7. Deems the service provider contract material if the amount is to be paid for that contract is greater than or equal to 5% of the group's annual gross written premium or 2% of its surplus, whichever is greater.
- 8. Outlines the process to enter into a service provider contract that is a material relationship.
- 9. Instructs the BOD to adopt a written policy in the plan of operation as approved by the board that prescribes the BOD's duties.
- 10. Requires each group to have an audit committee composed of at least three independent board members.
- 11. Allows a non-independent board member to participate in the committee if invited by a member but is not considered a member of the committee.

Fifty-second Legislature Second Regular Session Insurance

HB 2553

- 12. Requires the audit committee to have a written charter that defines the committee's purpose and provides a list of minimum duties.
- 13. Authorizes the director of the Department of Insurance (DOI) to waive the requirement to establish an audit committee provided the group shows that it is impracticable and the BOD is able to fulfill the requirements of the audit committee.
- 14. Directs the BOD to adopt and disclose governance standards and make the information available by electronic means and available to members and insureds on quest.
 - a. Outlines the contents to be included in the information.
- 15. Instructs the BOD to adopt and disclose a code of business conduct and ethics for board directors, officer and employees, and disclosure of any waivers to the code under specified reasons.
- 16. Requires the captive manager, president or chief executive officer of the group to immediately notify the domestic regulator, in writing, of any material noncompliance with the group's governance standards.
- 17. Defines pertinent terms.
- 18. Makes technical changes.

CURRENT LAW

<u>Statute</u> defines *risk retention group* as a corporation or other limited liability association formed in any state whose primary activity consists of assuming and spreading all or any portion of the liability of its group members.

<u>Pursuant to A.R.S. § 20-2402</u> a risk retention group who is licensed and chartered in this state must submit an acceptable feasibility study to DOI before offering any kind of liability insurance in this state or in any other state. Any application for a risk retention group received by DOI must be provided to the National Association of Insurance Commissioners.

<u>Pursuant to A.R.S. § 20-2403</u> before offering insurance in this state, risk retention groups not chartered and licensed in Arizona must provide a statement identifying the state or states in which the group is chartered and licensed as a liability insurance company and make available any required information and documentation to DOI. Additionally, the risk retention group must provide a statement of registration which designates the director as its agent for the purpose of receiving service of legal documents.

ARIZONA HOUSE OF REPRESENTATIVES Fifty-second Legislature - First Regular Session

ROLL CALL VOTE

COMMITTEE ON	INSURANCE BILL N			BILL NO.	3563
DATE February	17,2	016		MOTION: _	PP
	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Coleman		X			
Mr. Larkin		X			
Mr. Lovas		X			
Ms. McCune Davis		X			
Ms. Otondo		×			
Mr. Robson		X			
Mr. Livingston, Vice-Chairman		X			
Ms. Fann, Chairman		X			
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			ann a		2
APPROVED:	COMMITTEE SECRETARY				
KAREN FANN, Chairman DAVID LIVINGSTON, Vice-Chairn				ż	
			Δ	TTACHMENT	



HOUSE OF REPRESENTATIVES

HB 2692

insurance; pharmacy benefits; audits; pricing Prime Sponsor: Representative Livingston, LD 22

X Committee on Insurance

Caucus and COW

House Engrossed

STRIKE-EVERYTHING SUMMARY

The strike-everything amendment to HB 2692 establishes procedures and reporting requirements for pharmacy audits.

PROVISIONS

- 1. Requires an auditing entity who is conducting an in-pharmacy audit to:
 - a. Give a pharmacy at least 14 days' written notice,
 - b. Not conduct an audit during the first five days of the month unless the pharmacy otherwise consents.
 - c. Provide the pharmacy a list of items, as identified by prescription number or date range, to be audited.
 - d. Limit the audit to claims with an adjudicated date of less than two years.
- 2. Specifies an in-pharmacy or desktop audit which involves clinical or professional judgment must be conducted by or in consultation with a pharmacist.
- 3. Allows a pharmacy to use hospital or other authorized practitioner records to validate the pharmacy records.
- 4. Requires each pharmacy audit to be under the same standards and parameters as other similarly situated pharmacies in this state.
- 5. Requires an auditing entity who is conducting an in-pharmacy or desktop audit to comply with the following:
 - a. The entity must base a finding of overpayment or underpayment on the actual overpayment or underpayment, unless directed by federal or state law.
 - b. The entity is prohibited from recouping monies for any clerical errors identified in the audit.
 - c. The dispensing fee amount cannot be included in any finding of an overpayment unless certain criteria are met.
- 6. Prohibits interest from accruing during the audit period.
- 7. Directs the auditing entity to:
 - a. Deliver a preliminary audit report to the pharmacy within 60 days of completion.
 - b. Establish and make available to network pharmacies a written appeals process.
 - i. The process must allow a pharmacy to appeal an unfavorable audit report at least 30 days from the delivery of the final audit report.

Insurance

ATTACHMENT 5

HB 2692

- c. Provide a telephone number for which a pharmacy could contact the individual responsible for processing appeals.
- d. Deliver a final audit report to the pharmacy within 90 days after receiving the preliminary audit report or final appeal.
- 8. Authorizes the pharmacy to provide documentation to address any discrepancies in the audit at least 30 days from receiving the report.
- 9. Requires all contracts between a pharmacy benefits manager and a pharmacy must include a process to appeal, investigate and resolve disputes regarding final audit findings.
- 10. Prevents chargebacks, recoupment or other penalties from being assessed until the appeals process has been completed and the final audit report has been issued.
- 11. Asserts audit information cannot be shared, unless required by federal or state law.
 - a. Allows auditors access to previous reports that were conducted by that auditor.
- 12. Applies the auditing requirements to audits conducted of pharmacies located in this state.
- 13. States the auditing requirements do not apply to:
 - a. Claims reviews that are initiated within three business days after transmission of a claim which no chargeback or recoupment is demanded, and
 - b. Audits conducted due to suspicion of fraudulent activity.
 - i. Audits must be documented and made available on request.
- 14. Contains an applicability clause.

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2692 (Reference to printed bill)

1	Strike everything after the enacting clause and insert:
2	"Section 1. Title 20, Arizona Revised Statutes, is amended by adding
3	chapter 25, to read:
4	CHAPTER 25
5	PHARMACY BENEFITS
6	ARTICLE 1. AUDITING
7	20-3321. <u>Definitions</u>
8	IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
9	1. "AUDITING ENTITY" MEANS ANY PERSON, COMPANY, GROUP OR PLAN WORKING
10	ON BEHALF OF OR PURSUANT TO A CONTRACT WITH AN INSURER OR PHARMACY BENEFITS
11	MANAGER FOR THE PURPOSES OF AUDITING PHARMACY DRUG CLAIMS ADJUDICATED BY
12	PHARMACIES.
13	2. "CLERICAL ERRORS" MEANS A MINOR RECORDKEEPING OR TRANSCRIBING
14	ERROR, INCLUDING TYPOGRAPHICAL ERRORS, SCRIVNER'S ERRORS OR COMPUTER ERRORS,
15	IN A REQUIRED ELECTRONIC OR HARD COPY DOCUMENT, RECORD OR PRESCRIPTION ORDER
16	IF BOTH OF THE FOLLOWING CRITERIA ARE MET:
17_	(a) THE ERROR DID NOT RESULT IN ACTUAL FINANCIAL HARM TO AN ENTITY.
18	(b) THE ERROR DID NOT INVOLVE DISPENSING AN INCORRECT DOSE OR TYPE OF
19	MEDICATION OR DISPENSING A PRESCRIPTION DRUG TO THE WRONG PERSON.
20	3. "DESKTOP AUDIT" MEANS AN AUDIT THAT IS CONDUCTED BY AN AUDITING
21	ENTITY AT A LOCATION OTHER THAN THE LOCATION OF THE PHARMACIST OR PHARMACY.
22	DESKTOP AUDIT INCLUDES AN AUDIT THAT IS PERFORMED AT THE OFFICES OF THE
23	AUDITING ENTITY DURING WHICH THE PHARMACIST OR PHARMACY PROVIDES REQUESTED

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1	DOCUMENTS FOR REVIEW BY HARD COPY OR BY MICROFICHE, DISK OR OTHER ELECTRONIC
2	MEDIA.
3	4. "IN-PHARMACY AUDIT" MEANS AN AUDIT THAT IS CONDUCTED BY AN AUDITING
4	ENTITY AT THE PHYSICAL BUSINESS ADDRESS OF THE PHARMACY WHERE THE CLAIM WAS
5	ADJUDICATED.
6	5. "INSURER" MEANS A DISABILITY INSURER, GROUP DISABILITY INSURER,
7	BLANKET DISABILITY INSURER, HEALTH CARE SERVICES ORGANIZATION, HOSPITAL
8	SERVICE CORPORATION, MEDICAL SERVICE CORPORATION OR HOSPITAL AND MEDICAL
9	SERVICE CORPORATION.
10	6. "PHARMACIST" HAS THE SAME MEANING PRESCRIBED IN SECTION 32-1901.
11	7. "PHARMACY" HAS THE SAME MEANING PRESCRIBED IN SECTION 32-1901.
12	8. "PHARMACY BENEFITS MANAGER" MEANS A PERSON, BUSINESS OR OTHER
13	ENTITY THAT, PURSUANT TO A CONTRACT OR UNDER AN EMPLOYMENT RELATIONSHIP WITH
14	A CARRIER OR OTHER THIRD-PARTY PAYER, EITHER DIRECTLY OR THROUGH AN
15	INTERMEDIARY MANAGES THE PRESCRIPTION DRUG COVERAGE PROVIDED BY THE CARRIER
16	OR OTHER THIRD-PARTY PAYER, INCLUDING THE PROCESSING AND PAYMENT OF CLAIMS
17	FOR PRESCRIPTION DRUGS, THE PERFORMANCE OF DRUG UTILIZATION REVIEW, THE
18	PROCESSING OF DRUG PRIOR AUTHORIZATION REQUESTS, THE ADJUDICATION OF APPEALS
19	OR GRIEVANCES RELATED TO PRESCRIPTION DRUG COVERAGE, CONTRACTING WITH NETWORK
20	PHARMACIES AND CONTROLLING THE COST OF COVERED PRESCRIPTION DRUGS.
21	20-3322. Audit procedures: interest prohibition
22	A. THE FOLLOWING PROCEDURES APPLY TO AN AUDIT CONDUCTED BY AN AUDITING
23	ENTITY:
24	 WHEN CONDUCTING AN IN-PHARMACY AUDIT AN AUDITING ENTITY SHALL:
25	(a) GIVE A PHARMACY AT LEAST FOURTEEN DAYS' WRITTEN NOTICE.
26	(b) NOT CONDUCT AN AUDIT DURING THE FIRST FIVE DAYS OF THE MONTH
27	UNLESS THE PHARMACY OTHERWISE CONSENTS.
28	(c) PROVIDE THE PHARMACY A LIST OF ITEMS TO BE AUDITED THAT PROVIDES

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AUDITING ENTITY IS SEEKING TO AUDIT.

FOR IDENTIFICATION OF PRESCRIPTION NUMBER OR NUMBERS OR DATE RANGE THAT THE

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- (d) WHEN CONDUCTING AN IN-PHARMACY OR DESKTOP AUDIT, LIMIT THE AUDIT 1 TO CLAIMS THAT MAY NOT EXCEED TWO YEARS FROM THE EARLIER OF THE DATE THAT THE 2 CLAIM WAS ADJUDICATED BY THE PHARMACY BENEFITS MANAGER. 3 2. AN IN-PHARMACY AUDIT OR DESKTOP AUDIT THAT INVOLVES CLINICAL OR 5 PROFESSIONAL JUDGMENT SHALL BE CONDUCTED BY OR IN CONSULTATION WITH A 6 PHARMACIST. . 7 3. THE PHARMACY MAY USE THE RECORDS OF A HOSPITAL, PHYSICIAN OR OTHER 8 AUTHORIZED PRACTITIONER TO VALIDATE THE PHARMACY RECORDS. THE VALIDATED RECORDS .MAY BE OBTAINED VIA ELECTRONIC METHODS, FAX, PHONE OR WRITTEN PRESCRIPTION ORDERS AND DO NOT HAVE TO BE THE ORIGINAL HARD COPY PRESCRIPTION 10 11 ORDER. 12 4. EACH PHARMACY SHALL BE AUDITED UNDER THE SAME STANDARDS AND PARAMETERS AS OTHER SIMILARLY SITUATED PHARMACIES IN THIS STATE. 13 B. WHEN CONDUCTING AN IN-PHARMACY AUDIT OR DESKTOP AUDIT, AN AUDITING 14 ENTITY SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS: 15 16 1. THE AUDITING ENTITY SHALL BASE A FINDING OF OVERPAYMENT OR UNDERPAYMENT ON THE ACTUAL OVERPAYMENT OR UNDERPAYMENT AND NOT ON A 17 PROJECTION BASED ON THE NUMBER OF PATIENTS SERVED WHO HAVE SIMILAR DIAGNOSES 18 OR ON THE NUMBER OF SIMILAR ORDERS OR REFILLS FOR SIMILAR DRUGS, UNLESS 19 20 REQUIRED BY FEDERAL OR STATE LAW. 2. THE AUDITING ENTITY MAY NOT RECOUP MONIES FROM THE PHARMACY FOR ANY 21 CLERICAL ERRORS IDENTIFIED IN AN AUDIT. 22 23 3. ANY FINDING OF AN OVERPAYMENT MAY NOT INCLUDE THE DISPENSING FEE 24 AMOUNT UNLESS ANY OF THE FOLLOWING CRITERIA ARE MET: (a) A PRESCRIPTION WAS NOT RECEIVED BY THE PATIENT OR THE PATIENT'S 25 26 DESIGNEE. 27 (b) THE PRESCRIBER DENIED AUTHORIZATION. 28 THE PRESCRIPTION DISPENSED WAS A MEDICATION ERROR BY THE PHARMACY.
 - C. INTEREST MAY NOT ACCRUE DURING THE AUDIT PERIOD.

(d) THE IDENTIFIED OVERPAYMENT IS BASED SOLELY ON AN EXTRA DISPENSING

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1	20-3323. <u>Audit reports</u>
2	A. THE AUDITING ENTITY MUST DELIVER A PRELIMINARY AUDIT REPORT TO THE
3	PHARMACY WITHIN SIXTY DAYS AFTER THE CONCLUSION OF THE AUDIT.
4	B. A PHARMACY IS ALLOWED AT LEAST THIRTY DAYS AFTER RECEIPT OF THE
5	PRELIMINARY AUDIT TO PROVIDE DOCUMENTATION TO ADDRESS ANY DISCREPANCY FOUND
6	IN THE AUDIT.
7	C. EACH AUDITING ENTITY CONDUCTING AN AUDIT SHALL ESTABLISH AND MAKE
8	AVAILABLE TO NETWORK PHARMACIES A WRITTEN APPEALS PROCESS UNDER WHICH A
9	PHARMACY SHALL HAVE AT LEAST THIRTY DAYS FROM THE DELIVERY OF THE FINAL AUDIT
10	REPORT TO APPEAL AN UNFAVORABLE AUDIT REPORT TO THE AUDITING ENTITY.
11	D. EACH AUDITING ENTITY SHALL PROVIDE A TELEPHONE NUMBER AT WHICH A
12	NETWORK PHARMACY MAY CONTACT THE PHARMACY BENEFITS MANAGER AND SPEAK TO
13	SOMEONE WHO IS RESPONSIBLE FOR PROCESSING APPEALS.
14	E. ALL CONTRACTS BETWEEN A PHARMACY BENEFITS MANAGER AND A NETWORK
15	PHARMACY OR A PHARMACY BENEFITS MANAGER AND A PHARMACY'S CONTRACTING
16	REPRESENTATIVE SHALL INCLUDE A PROCESS TO APPEAL, INVESTIGATE AND RESOLVE
17	DISPUTES REGARDING FINAL AUDIT FINDINGS.
18	F. THE AUDITING ENTITY MUST DELIVER A FINAL AUDIT REPORT TO THE
19	PHARMACY WITHIN NINETY DAYS AFTER RECEIPT OF THE PRELIMINARY AUDIT REPORT OF
20	FINAL APPEAL, WHICHEVER IS LATER.
21	G. CHARGEBACKS, RECOUPMENT OR OTHER PENALTIES MAY NOT BE ASSESSED
22	UNTIL THE APPEALS PROCESS HAS BEEN EXHAUSTED AND THE FINAL AUDIT REPORT HAS
23	BEEN ISSUED.
24	H. UNLESS OTHERWISE REQUIRED BY STATE OR FEDERAL LAW, AUDIT
25	INFORMATION MAY NOT BE SHARED. AUDITORS MAY HAVE ACCESS ONLY TO PREVIOUS
26	AUDIT REPORTS ON A PARTICULAR PHARMACY CONDUCTED BY THAT SAME AUDITING
27	ENTITY.
28	20-3324. Applicability
29	A. NOTWITHSTANDING ANY OTHER LAW, THIS ARTICLE APPLIES ONLY TO AUDITS
30	CONDUCTED OF PHARMACIES LOCATED IN THIS STATE.

1	B. THIS ARTICLE DOES NOT APPLY TO CLAIMS REVIEWS THAT ARE INITIATE
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3	
4	C. THIS ARTICLE DOES NOT APPLY TO AN AUDIT CONDUCTED IN WHICH A
5	
6	MISREPRESENTATION IS EVIDENCED BY PHYSICAL REVIEW. REVIEW OF CLAIMS DATA,
7	
8	IN THIS SUBSECTION SHALL BE DOCUMENTED AND AVAILABLE ON REQUEST.
9	Sec. 2. <u>Applicability</u>
10	This act applies to contracts entered into, amended, extended or
11	
12	Amend title to conform

DAVID LIVINGSTON

2692LIVINGSTON 02/15/2016 12:03 PM C: mjh

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ARIZONA HOUSE OF REPRESENTATIVES Fifty-second Legislature - Second Regular Session

ROLL CALL VOTE

COMMITTEE ON	INSURA	NCE		BILL NO. HE		
DATE February	y 17, 2016			MOTION:	DPAS	
	PASS	AYE	NAY	PRESENT	ABSENT	
Mr. Coleman		X				
Mr. Larkin		X				
Mr. Lovas		X				
Ms. McCune Davis		X				
Ms. Otondo		X				
Mr. Robson		X				
Mr. Livingston, Vice-Chairman		X				
Ms. Fann, Chairman		1				
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APPROVED: Maina KAREN FANN, Chairman DAVID LIVINGSTON, Vice-Chairman			COMMITTEE SECRETARY			
			A ⁻	TTACHMENT		

ARIZONA STATE LEGISLATURE

Fifty-second Legislature - Second Regular Session

COMMITTEE ATTENDANCE RECORD

CHAIRMAN: Karen Fann		INSURANCE						
		VICE-	: <u>David</u>	David Livingston				
	DATE	2/17/16	/16	/16	/16	/16		
-	CONVENED	0.07A, m	m	m	m	m		
•	RECESSED							
-	RECONVENED							
-	ADJOURNED	10:23A,M						
MEMBER	S							
Mr. Colem	an .	X						
Mr. Larkin		X						
Mr. Lovas		X						
Ms. McCu	ne Davis	X						
Ms. Otond	lo	X						
Mr. Robso	n	X						
Mr. Livings	ston, Vice-Chairman	X						
Ms. Fann,	Chairman	X		ALAMONALAMORPHANIA				
	√ Present	Abs	ent	exc	Excuse	d		

